

IN THE DISTRICT COURT OF SAUNDERS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,
JIM MACY, Director,
NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY,

Plaintiff,

vs.

ALTEN, LLC,

Defendant.

Case No. CI 21-36

ANSWER

Defendant AltEn, LLC (“AltEn”) submits its Answer to the Nebraska Department of Environment and Energy (“NDEE” or “Department”) Complaint and states as follows:

PARTIES AND INTERESTS

1. Paragraphs 1 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.
2. Paragraph 2 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.
3. AltEn admits Paragraph 3.
4. Paragraph 4 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

JURISDICTION AND VENUE

5. AltEn admits the allegations contained within Paragraph 5.
6. AltEn admits the allegations contained within Paragraph 6.

LEGAL BACKGROUND

A. General.

7. Paragraph 7 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

8. Paragraph 8 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

9. Paragraph 9 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

10. Paragraph 10 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

11. Paragraph 11 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

12. Paragraph 12 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

13. Paragraph 13 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

14. Paragraph 14 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

B. Solid Waste.

15. Paragraph 15 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

16. Paragraph 16 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

17. Paragraph 17 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

18. Paragraph 18 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

19. Paragraph 19 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

C. Water.

General

20. Paragraph 20 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

21. Paragraph 21 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

22. Paragraph 22 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

23. Paragraph 23 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

Storm Water Discharges

24. Paragraph 24 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

25. Paragraph 25 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

26. Paragraph 26 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

27. Paragraph 27 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

28. Paragraph 28 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

29. Paragraph 29 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

30. Paragraph 30 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

Wastewater Discharges and Land Application

31. Paragraph 31 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

32. Paragraph 32 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

33. Paragraph 33 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

34. Paragraph 34 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

35. Paragraph 35 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

36. Paragraph 36 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

37. Paragraph 37 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

38. Paragraph 38 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

Operation and Maintenance of Lagoon Systems

39. Paragraph 39 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

40. Paragraph 40 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

41. Paragraph 41 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

42. Paragraph 42 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

43. Paragraph 43 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

D. Air.

44. Paragraph 44 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

45. Paragraph 45 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

46. Paragraph 46 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

47. Paragraph 47 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

48. Paragraph 48 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

E. Enforcement.

49. Paragraph 49 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

50. Paragraph 50 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

51. Paragraph 51 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

52. Paragraph 52 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

FACTUAL BACKGROUND

A. General.

AltEn's Ethanol Manufacturing Process

53. In response to Paragraph 53, AltEn denies that it has ever produced 24 million gallons of ethanol annually.

54. AltEn admits Paragraph 54.

55. In response to Paragraph 55, AltEn admits that it submitted an Air Construction Modification Application on or about February 14, 2013. AltEn alleges on June 26, 2012 it submitted applications to modify its Compost Permit No. NE0204447 and its NPDES Permit No. NE0137634. On July 5, 2012, AltEn submitted additional information for its application to modify its Compost Permit No. NE0204447. The Department approved the modifications to the Compost Permit No. NE0204447 on July 26, 2012. The Department approved the modifications to the NPDES Permit No. NE0137634 on October 29, 2012.

56. In response to Paragraph 56, AltEn denies the Department's characterization of thin stillage as wastewater. AltEn denies any inference that it is not a normal ethanol plant.

57. In response to Paragraph 57, AltEn has insufficient information to admit or deny and, therefore, denies the same.

58. AltEn admits Paragraph 58.

59. AltEn admits Paragraph 59.

60. In response to Paragraph 60, AltEn admits that it generates thin stillage and distiller's grains, but denies the characterization of thin stillage as wastewater. AltEn denies the inference that it is not a normal ethanol plant. AltEn denies that treated seed corn contains concentrations of glyphosate (Roundup). AltEn denies that the concentration of pesticides becomes more concentrated through the ethanol process. AltEn is without sufficient information to admit or deny the Department's 2019 discoveries and therefore denies the same. AltEn alleges that the green color in water or distiller's grains is a result of dyes used in seed corn coatings.

61. In response to Paragraph 61, AltEn denies any inference that it violated applicable law.

62. AltEn denies Paragraph 62.

63. In response to Paragraph 63, AltEn is without sufficient information to admit or deny and, therefore, denies the same.

Layout of AltEn's Facility

64. In response to Paragraph 64, AltEn denies any inference that it is not a normal ethanol plant. AltEn admits it used treated seed corn as a feedstock. AltEn denies the balance of Paragraph 64.

65. In response to Paragraph 65, AltEn generally admits the Department's characterization, but affirmatively alleges that from the grain receiving/unloading area, the treated seed corn is placed into a bin, and not a hopper.

66. In response to Paragraph 66, AltEn generally admits the Department's characterization, but alleges that water can be pumped directly into either the west lagoon or the northeast lagoon.

67. AltEn admits Paragraph 67

68. AltEn admits Paragraph 68.

69. AltEn admits Paragraph 69.

70. In response to Paragraph 70, AltEn denies any inference that it is not a normal ethanol plant.

71. AltEn admits Paragraph 71.

B. Waste.

72. AltEn admits Paragraph 72.

73. In response to Paragraph 73, AltEn has insufficient information to admit or deny and, therefore, denies the same.

74. In response to Paragraph 74, AltEn has insufficient information to admit or deny the first two sentences, and therefore denies the same. AltEn admits that it voluntarily withdrew its soil conditioner application. AltEn denies the balance of Paragraph 74.

75. AltEn admits Paragraph 75.

76. In response to Paragraph 76, AltEn admits that the Department conducted an investigation at AltEn on July 31, 2019. AltEn lacks sufficient information to admit or deny the balance of Paragraph 76 and therefore denies the same.

77. In response to Paragraph 77, AltEn admits that the Department issued an NOV on September 23, 2019. AltEn denies any inference that it violated applicable law.

78. AltEn admits Paragraph 78.

79. In response to Paragraph 79, AltEn admits that it responded to the September 23, 2019 NOV on October 25, 2019. AltEn alleges that it was not served with the September 23, 2019 NOV until September 27, 2019. AltEn admits that it asserted the distiller's grain was not a solid waste. AltEn denies that it did not provide a plan for the disposal of distiller's grain. AltEn denies the balance of Paragraph 79.

80. In response to Paragraph 80, AltEn admits that the Department responded on January 30, 2020. AltEn denies any inference that it violated applicable law. AltEn is without sufficient information to admit or deny the balance of Paragraph 80 and, therefore, denies the same.

81. In response to Paragraph 81, AltEn admits that language was contained in the January 30, 2020 response. AltEn denies any inference that it violated applicable law.

82. In response to Paragraph 82, AltEn admits that it asserted the distiller's grain was not a solid waste. AltEn admits that its plan did not involve disposal at a permitted solid waste management facility. AltEn denies any inference that it did not submit a plan.

83. AltEn admits Paragraph 83.

84. AltEn admits Paragraph 84.

85. AltEn admits Paragraph 85.

86. In response to Paragraph 86, AltEn is without sufficient information to admit or deny, and therefore denies the same.

87. AltEn admits Paragraph 87.

88. AltEn denies Paragraph 88. AltEn has taken approximately 40,000 tons of distiller's grain to a permitted solid waste management facility.

89. In response to Paragraph 89, AltEn admits that there is distiller's grain onsite at AltEn's facility.

C. Water.

90. AltEn admits Paragraph 90.

91. AltEn admits Paragraph 91.

92. AltEn admits Paragraph 92.

93. In response to Paragraph 93, AltEn admits that Department personnel were present at AltEn's facility on July 3, 2018. AltEn denies that it was unable to provide SWPPPs upon request. AltEn emailed a SWPPP to the Department on July 3, 2018. AltEn is without sufficient information to admit or deny the balance of Paragraph 93 and, therefore, denies the same.

94. In response to Paragraph 94, AltEn is without sufficient information to admit or deny and, therefore, denies the same.

95. In response to Paragraph 95, AltEn admits that the Department issued an NOV on July 23, 2018. AltEn denies any inference in Paragraph 95 that it violated applicable law.

96. In response to Paragraph 96, AltEn has insufficient information to admit or deny and, therefore, denies the same.

97. In response to Paragraph 97, AltEn admits that the Department issued an NOV on April 24, 2019. AltEn denies any inference in Paragraph 97 that it violated applicable law. AltEn admits that it performed repairs to its lagoons on or about April 30, 2019 and May 15, 2019.

98. AltEn admits Paragraph 98.

99. AltEn admits Paragraph 99.

100. In response to Paragraph 100, AltEn has insufficient information to admit or deny the substance of the lab reports and, therefore, denies the same. AltEn admits the Department sent lab results postmarked May 2, 2019. AltEn denies the balance of Paragraph 100.

101. AltEn admits Paragraph 101.

102. In response to Paragraph 102, AltEn admits that it provided a response to the Consent Order on June 21, 2019. AltEn denies the Department's characterization of the response. AltEn denies the implication that the lagoons were operating in the areas were operating in the area designed for freeboard. AltEn denies the balance of Paragraph 102.

103. In response to Paragraph 103, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same. AltEn specifically denies that an AltEn representative stated the cooling tower had been leaking since June 2019. AltEn denies any inference that that its sampling location was incorrect. AltEn denies the balance of Paragraph 103.

104. In response to Paragraph 104, AltEn has insufficient information to admit or deny and, therefore, denies the same.

105. In response to Paragraph 105, AltEn has insufficient information to admit or deny and, therefore, denies the same.

106. AltEn admits Paragraph 106.

107. In response to Paragraph 107, AltEn admits that the Department issued an NOV on September 13, 2019. AltEn denies any inference that it violated applicable law.

108. In response to Paragraph 108, AltEn admits that the Department issued an NOV on September 13, 2019. AltEn denies any inference that it violated applicable law.

109. In response to Paragraph 109, AltEn admits that the Department issued an NOV on September 13, 2019. AltEn denies any inference that it violated applicable law.

110. In response to Paragraph 110, AltEn admits that the Department issued an NOV on September 13, 2019. AltEn denies any inference that it violated applicable law.

111. AltEn admits Paragraph 111.

112. In response to Paragraph 112, AltEn admits that the Department conducted a site visit on September 30, 2019. AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

113. In response to Paragraph 113, AltEn has insufficient information to admit or deny and, therefore, denies the same.

114. AltEn admits Paragraph 114.

115. In response to Paragraph 115, AltEn has insufficient information to admit or deny and, therefore, denies the same.

116. In response to Paragraph 116, AltEn has insufficient information to admit or deny the substance of the lab results and, therefore, denies the same. AltEn admits the Department sent lab results postmarked December 16, 2019. AltEn denies the balance of Paragraph 116.

117. In response to Paragraph 117, AltEn admits that the Department conducted a site visit on February 18, 2020. AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

118. In response to Paragraph 118, AltEn admits that it submitted a Revised Groundwater Monitoring Plan. AltEn denies any inference that it was not in compliance with the Consent Order.

119. AltEn admits Paragraph 119.

120. AltEn admits Paragraph 120.

121. In response to Paragraph 121, AltEn admits that the Department issued an NOV on May 1, 2020. AltEn denies any inference that it violated applicable law.

122. In response to Paragraph 122, AltEn admits that it submitted a response on June 8, 2020. AltEn denies any inference that it violated applicable law.

123. In response to Paragraph 123, AltEn has insufficient information to admit or deny and, therefore, denies the same.

124. AltEn admits Paragraph 124.

125. In response to Paragraph 125, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same. AltEn admits that a representative told the Department that lagoon water had been land applied. AltEn denies the Department's characterization that the September 13, 2019 NOV prohibited land application of such water. AltEn denies the balance of Paragraph 125.

126. In response to Paragraph 126, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

127. In response to Paragraph 127, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same. AltEn denies that there was no BMP to control runoff from distiller's grain in the staging area. AltEn denies the Department's characterization of spills, and alleges that these were in the process of repair. AltEn denies the balance of Paragraph 127.

128. AltEn admits Paragraph 128.

129. In response to Paragraph 129, AltEn admits the Department issue an LNC on October 2, 2020. AltEn denies any inference that it did not comply with applicable law.

130. In response to Paragraph 130, AltEn admits the Department issue an LNC on October 2, 2020. AltEn denies any inference that it did not comply with applicable law.

131. In response to Paragraph 131, AltEn admits the Department issue an LNC on October 2, 2020. AltEn denies any inference that it did not comply with applicable law.

132. AltEn admits Paragraph 132.

133. In response to Paragraph 133, AltEn admits that it sent three corrective action reports to the Department via email on October 12, 2020. AltEn denies the Department's characterization of events in Paragraph 133. AltEn denies the balance of Paragraph 133.

134. AltEn admits Paragraph 134.

135. AltEn admits Paragraph 135.

136. AltEn admits Paragraph 136.

137. In response to Paragraph 137, AltEn admits that it submitted information to the Department on December 24, 2020. AltEn denies the balance of Paragraph 137.

138. AltEn admits Paragraph 138.

139. In response to Paragraph 139, AltEn admits that the Department emailed AltEn on January 11, 2021. AltEn denies any inference that it violated applicable law.

140. In response to Paragraph 140, AltEn has insufficient information to admit or deny and, therefore, denies the same.

141. In response to Paragraph 141, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

142. In response to Paragraph 142, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same. AltEn denies that there was no storm water containment. AltEn denies the balance of Paragraph 142.

143. AltEn admits Paragraph 143.

144. In response to Paragraph 144, AltEn admits that the Department issued an LNC on February 16, 2021. AltEn denies any inference that it violated applicable law.

D. Air.

145. AltEn admits Paragraph 145.

146. AltEn admits Paragraph 146.

147. In response to Paragraph 147, AltEn denies any inference that it violated applicable law.

148. AltEn admits Paragraph 148.

149. AltEn denies Paragraph 149. CP14-066 was not issued until October 9, 2015.

150. AltEn admits Paragraph 150.

151. AltEn denies Paragraph 151.

152. In response to Paragraph 152, AltEn has insufficient information to admit or deny and, therefore, denies the same. AltEn denies any allegations that it violated applicable law.

153. In response to Paragraph 153, AltEn admits that onsite haul roads were not paved. AltEn alleges that it had an alternative method that alleviated the need to pave haul roads.

154. In response to Paragraph 154, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same. AltEn has insufficient information to admit or deny due to the lack of time period specified and, therefore, denies the same.

155. In response to Paragraph 155, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same. AltEn has insufficient

information to admit or deny due to the lack of time period specified and, therefore, denies the same.

156. In response to Paragraph 156, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same. AltEn admits a representative stated a few of the biochar super sacks had started on fire.

157. In response to Paragraph 157, AltEn admits that the Department issued an NOV on July 23, 2018. AltEn denies any inference that it did not comply with applicable law.

158. In response to Paragraph 158, AltEn admits that the Department issued an NOV on July 23, 2018. AltEn denies any inference that it did not comply with applicable law.

159. In response to Paragraph 159, AltEn admits that the Department issued an NOV on August 13, 2018. AltEn denies any inference that it did not comply with applicable law.

160. In response to Paragraph 160, AltEn admits that the Department issued an NOV on August 13, 2018. AltEn denies any inference that it did not comply with applicable law.

161. In response to Paragraph 161, AltEn denies any allegations that it violated applicable law. AltEn denies the Department's characterization of events in Paragraph 161. AltEn specifically denies the last sentence of Paragraph 161.

162. In response to Paragraph 162, AltEn admits that it submitted a report to the Department on September 14, 2018. AltEn denies any inference that it did not comply with applicable law.

163. In response to Paragraph 163, AltEn admits the Department conducted an inspection on October 2, 2018. AltEn admits a representative stated that AltEn was working on getting a monitoring system. AltEn denies any inference that it did not comply with applicable law.

164. AltEn admits Paragraph 164.

165. In response to Paragraph 165, AltEn generally admits the Department's characterization, but states it has insufficient information to admit or deny what the Department is currently reviewing.

166. In response to Paragraph 166, AltEn generally admits the Department's characterization, but states it has insufficient information to admit or deny what the Department is currently reviewing.

E. Recent Events.

167. In response to Paragraph 167, AltEn admits that the Department issued an Emergency Complaint and Order on February 4, 2021. AltEn denies any inference that it did not comply with applicable law.

168. In response to Paragraph 168, AltEn alleges that it completed its shutdown on February 8, 2021.

169. AltEn admits Paragraph 169.

170. In response to Paragraph 170, AltEn admits that the Department issued an Emergency Complaint and Order on February 20, 2021. AltEn denies any inference that it did not comply with applicable law.

171. AltEn admits Paragraph 171.

172. AltEn admits Paragraph 172.

FIRST CAUSE OF ACTION

**DISPOSAL OF SOLID WASTE AT A LOCATION OTHER THAN A SOLID WASTE
MANAGEMENT FACILITY HOLDING A PERMIT IN VIOLATION OF NEB. REV.
STAT. § 81-1506(3)(d).**

173. In response to Paragraph 173, AltEn incorporates by reference its responses to Paragraphs 1 through 172 as if fully set forth herein.

174. Paragraph 174 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

175. AltEn admits Paragraph 175.

176. AltEn denies 176.

177. In response to Paragraph 177, AltEn denies the Department's characterization. AltEn alleges that the amount of distiller's grain onsite has fluctuated over time.

178. AltEn denies Paragraph 178.

179. In response to Paragraph 179, AltEn admits that the Department issued NOV's on September 23, 2019 and January 30, 2020. AltEn denies the balance of Paragraph 179.

180. AltEn denies Paragraph 180.

181. AltEn denies Paragraph 181.

182. In response to Paragraph 182, AltEn alleges it held Permit No. NE0204447 to operate the AltEn, LLC Solid Waste Compost Facility.

183. AltEn denies Paragraph 183.

184. AltEn denies Paragraph 184.

185. AltEn denies Paragraph 185.

186. AltEn denies Paragraph 186.

SECOND CAUSE OF ACTION

OPERATING A SOLID WASTE MANAGEMENT FACILITY WITHOUT A PERMIT IN VIOLATION OF NEB. REV. STAT. § 81-1509(3)(a) AND 132 NEB. ADMIN. CODE § 2-001.

187. In response to Paragraph 187, AltEn incorporates by reference its responses to Paragraphs 1 through 172 as if fully set forth herein.

188. Paragraph 188 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

189. In response to Paragraph 189, AltEn alleges it held Permit No. NE0204447 to operate the AltEn, LLC Solid Waste Compost Facility.

190. In response to Paragraph 190, AltEn admits that the Department issued NOVs on September 23, 2019 and January 30, 2020. AltEn denies the balance of Paragraph 190.

191. AltEn denies Paragraph 191.

192. In response to Paragraph 192, AltEn denies the Department's characterization. AltEn alleges that the amount of distiller's grain onsite has fluctuated over time.

193. AltEn denies Paragraph 193.

194. AltEn denies Paragraph 194.

195. AltEn denies Paragraph 195.

196. AltEn denies Paragraph 196.

197. AltEn denies Paragraph 197.

THIRD CAUSE OF ACTION

CAUSING POLLUTION TO WATER AND LAND OF THE STATE IN VIOLATION OF NEB. REV. STAT. § 81-1506(1)(a).

198. In response to Paragraph 198, AltEn incorporates by reference its responses to Paragraphs 1 through 172 as if fully set forth herein.

199. Paragraph 199 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

A. Distiller's Grain.

200. AltEn denies Paragraph 200.

201. AltEn denies Paragraph 201.

202. In response to Paragraph 202, AltEn denies the Department's characterization. AltEn alleges that the amount of distiller's grain onsite has fluctuated over time.

203. In response to Paragraph 203, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

204. In response to Paragraph 204, AltEn admits that distiller's grain is sitting on the ground. AltEn denies the balance of Paragraph 204.

205. AltEn denies Paragraph 205.

206. AltEn denies Paragraph 206.

207. AltEn denies Paragraph 207.

B. Lagoon Wastewater.

208. AltEn denies Paragraph 208.

209. In response to Paragraph 209, AltEn admits that the Department issued an NOV on September 13, 2019. AltEn denies any inference that it violated applicable law.

210. AltEn denies Paragraph 210.

211. AltEn admits Paragraph 211.

212. AltEn denies Paragraph 212.

213. AltEn admits Paragraph 213.

214. AltEn denies Paragraph 214.

- 215. AltEn denies Paragraph 215.
- 216. AltEn denies Paragraph 216.
- 217. AltEn denies Paragraph 217.
- 218. AltEn denies Paragraph 218.
- 219. AltEn denies Paragraph 219.
- 220. AltEn denies Paragraph 220.
- 221. AltEn denies Paragraph 221.
- 222. AltEn denies Paragraph 222.

FOURTH CAUSE OF ACTION

DISCHARGE OF A POLLUTANT INTO WATERS OF THE STATE WITHOUT A PERMIT IN VIOLATION OF NEB. REV. STAT. § 81-1506(2)(a).

223. In response to Paragraph 223, AltEn incorporates by reference its responses to Paragraphs 1 through 172 as if fully set forth herein.

224. Paragraph 224 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

225. AltEn admits Paragraph 225.

226. AltEn denies Paragraph 226.

227. AltEn denies Paragraph 227.

228. In response to Paragraph 228, AltEn admits that it holds NPDES Permit NE0137634. AltEn denies any inference that it violated applicable law.

229. In response to Paragraph 229, AltEn admits that the Department issued an NOV on September 13, 2019. AltEn denies any inference that it violated applicable law.

230. AltEn admits Paragraph 230.

231. AltEn denies Paragraph 231.

232. In response to Paragraph 232, AltEn denies any inference that it violated applicable law.

233. AltEn denies Paragraph 233.

234. AltEn denies Paragraph 234.

235. AltEn denies Paragraph 235.

236. AltEn denies Paragraph 236.

237. AltEn denies Paragraph 237.

FIFTH CAUSE OF ACTION

FAILURE TO COMPLY WITH NPDES PERMIT NE0137634 IN VIOLATION OF NEB. REV. STAT. § 81-1508.02(1)(b).

238. In response to Paragraph 238, AltEn incorporates by reference its responses to Paragraphs 1 through 172 as if fully set forth herein.

239. Paragraph 239 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

A. Discharge of Pollutant Not Authorized by NPDES Permit NE0137634.

240. Paragraph 240 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

241. AltEn admits Paragraph 241.

242. Paragraph 242 is a statement and does not assert any claims against AltEn and, therefore, no response is required.

243. AltEn denies Paragraph 243.

244. AltEn denies Paragraph 244.

245. In response to Paragraph 245, AltEn admits that it submitted a BMP on May 9, 2019. AltEn denies any inference that it violated applicable law.

246. In response to Paragraph 246, AltEn admits that the Department issued an NOV on September 13, 2019. AltEn denies any inference that it violated applicable law.

247. AltEn denies Paragraph 247.

248. AltEn denies Paragraph 248.

249. AltEn denies Paragraph 249.

250. In response to Paragraph 250, AltEn admits that it submitted a BMP on October 16, 2020. AltEn denies any inference that it violated applicable law.

251. In response to Paragraph 251, AltEn admits that it submitted additional information which the Department received on December 24, 2020. AltEn denies any inference that it violated applicable law.

252. AltEn admits Paragraph 252.

253. AltEn denies Paragraph 253.

254. AltEn denies Paragraph 254.

B. Failure to Meet Ground Water Monitoring Report Deadline.

255. Paragraph 255 is a statement and does not assert any claims against AltEn and, therefore, no response is required.

256. Paragraph 256 is a statement and does not assert any claims against AltEn and, therefore, no response is required.

257. Paragraph 257 is a statement and does not assert any claims against AltEn and, therefore, no response is required.

258. In response to Paragraph 258, AltEn admits that it conducted its first quarterly sampling event on October 12, 2020. AltEn denies that it received all the necessary information to submit to the Department on January 4, 2021. AltEn denies the balance of Paragraph 258.

259. In response to Paragraph 258, AltEn denies the Department's characterization of the timeline and alleges that due to delays beyond its control, AltEn was unable to submit the groundwater monitoring report on November 26, 2020.

260. AltEn denies Paragraph 260.

261. AltEn denies Paragraph 261.

262. AltEn denies Paragraph 262.

263. AltEn denies Paragraph 263.

SIXTH CAUSE OF ACTION

FAILURE TO COMPLY WITH AN ORDER OF THE DIRECTOR IN VIOLATION OF NEB. REV. STAT. § 81-1508.01(1)(b).

264. In response to Paragraph 264, AltEn incorporates by reference its responses to Paragraphs 1 through 172 as if fully set forth herein.

265. Paragraph 265 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

266. There is no Paragraph 266 in the Department's Complaint.

267. In response to Paragraph 267, AltEn admits that it entered into a Consent Order with the Department on April 24, 2019. AltEn denies any inference that it violated applicable law.

268. In response to Paragraph 268, AltEn admits that it entered into a Consent Order with the Department on April 24, 2019. AltEn denies any inference that it violated applicable law.

269. In response to Paragraph 269, AltEn admits that it entered into a Consent Order with the Department on April 24, 2019. AltEn denies any inference that it violated applicable law.

270. AltEn denies Paragraph 270.

A. Consent Order Item (B).

271. In response to Paragraph 271, AltEn denies any inference that it violated applicable law.

272. In response to Paragraph 272, AltEn admits that it submitted information regarding repairs of the northeast and southeast lagoons from an engineering firm. AltEn denies any inference that it violated applicable law.

273. AltEn denies Paragraph 273.

274. AltEn denies Paragraph 274.

B. Consent Order Item (D).

275. In response to Paragraph 275, AltEn denies any inference that it violated applicable law.

276. AltEn denies Paragraph 276.

C. Consent Order Items (E) & (F).

277. In response to Paragraph 277, AltEn denies any inference that it violated applicable law.

278. In response to Paragraph 278, AltEn denies any inference that it violated applicable law. AltEn alleges it submitted a ground water monitoring plan on June 28, 2019. AltEn alleges the Department denied this plan on December 16, 2019.

279. In response to Paragraph 279, AltEn admits that the installation of four new ground water monitoring wells was completed on September 25, 2020 and that sampling occurred on October 12, 2020. AltEn denies any inference that it violated applicable law.

280. In response to Paragraph 280, AltEn denies any inference that it violated applicable law.

281. In response to Paragraph 281, AltEn denies any inference that it violated applicable law.

D. Consent Order Item (G).

282. In response to Paragraph 282, AltEn denies any inference that it violated applicable law.

283. AltEn denies Paragraph 283.

284. AltEn denies Paragraph 284.

285. AltEn denies Paragraph 285.

286. AltEn denies Paragraph 286.

287. AltEn denies Paragraph 287.

SEVENTH CAUSE OF ACTION

FAILURE TO COMPLY WITH TITLE 119 AND TITLE 123 REGULATORY REQUIREMENTS IN VIOLATION OF NEB. REV. STAT. § 81/1508.02(1)(e).

288. In response to Paragraph 288, AltEn incorporates by reference its responses to Paragraphs 1 through 172 as if fully set forth herein.

289. Paragraph 289 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

A. Requirement to Fix Animal and Vegetation Damage.

290. Paragraph 290 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

291. In response to Paragraph 291, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

292. In response to Paragraph 292, AltEn admits that the Department issued an NOV on April 24, 2019. AltEn denies any inference that it violated applicable law.

293. In response to Paragraph 293, AltEn denies any inference that it violated applicable law.

294. AltEn denies Paragraph 294.

295. In response to Paragraph 295, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

296. In response to Paragraph 296, AltEn admits that the Department issued an LNC on October 2, 2020. AltEn denies any inference that it violated applicable law.

297. In response to Paragraph 297, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

298. AltEn denies Paragraph 298.

299. AltEn denies Paragraph 299.

300. AltEn denies Paragraph 300.

B. Requirement to Properly Operate and Maintain Lagoon Liners.

301. Paragraph 301 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

302. In response to Paragraph 302, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

303. In response to Paragraph 303, AltEn admits that the Department issued an NOV on April 24, 2019. AltEn denies any inference that it violated applicable law.

304. AltEn denies Paragraph 304.

305. AltEn denies Paragraph 305.

306. In response to Paragraph 306, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

307. In response to Paragraph 307, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

308. In response to Paragraph 308, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

309. In response to Paragraph 309, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

310. In response to Paragraph 310, AltEn admits that the Department issued an LNC on October 2, 2020. AltEn denies any inference that it violated applicable law.

311. In response to Paragraph 311, AltEn admits that it performed repairs to the west lagoon. AltEn denies any inference that it violated applicable law.

312. AltEn denies Paragraph 312.

313. AltEn denies Paragraph 313.

314. AltEn denies Paragraph 314.

C. Construction Permit Requirement.

315. Paragraph 315 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

316. In response to Paragraph 316, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

317. In response to Paragraph 317, AltEn denies any inference that it violated applicable law.

318. In response to Paragraph 318, AltEn denies any inference that it violated applicable law.

319. In response to Paragraph 319, AltEn admits that the Department issued an NOV on September 13, 2019. AltEn denies any inference that it violated applicable law.

320. In response to Paragraph 320, AltEn denies any inference that it violated applicable law.

321. AltEn denies Paragraph 321.

D. Operation of Wastewater Treatment Facilities.

322. Paragraph 322 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

323. In response to Paragraph 323, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

324. In response to Paragraph 324, AltEn admits that the Department issued an NOV on September 13, 2019. AltEn denies any inference that it violated applicable law.

325. In response to Paragraph 325, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

326. AltEn denies Paragraph 326.

327. AltEn denies Paragraph 327.

328. AltEn denies Paragraph 328.

329. AltEn denies Paragraph 329.

EIGHTH CAUSE OF ACTION

FAILURE TO COMPLY WITH INDUSTRIAL STORM WATER PERMIT CONDITIONS IN VIOLATION OF NEB. REV. STAT. § 81-1508.02(1)(b).

330. In response to Paragraph 330, AltEn incorporates by reference its answers to Paragraphs 1 through 172 as if fully set forth herein.

331. Paragraph 331 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

332. AltEn admits Paragraph 332.

A. Requirement to Minimize Exposure.

333. Paragraph 333 is a statement and does not assert any claims against AltEn and, therefore, no response is required.

334. In response to Paragraph 334, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

335. In response to Paragraph 335, AltEn denies any inference that it violated applicable law.

336. In response to Paragraph 336, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

337. AltEn denies Paragraph 337.

338. In response to Paragraph 338, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

339. In response to Paragraph 339, AltEn denies the Department's characterization that the silt fence was "installed" on September 16, 2020.

340. AltEn denies Paragraph 340.

B. Requirement to Keep Exposed Areas Clean and Materials Orderly and Labeled.

341. Paragraph 341 is a statement and does not assert any claims against AltEn and, therefore, no response is required.

342. In response to Paragraph 342, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

343. AltEn denies Paragraph 343.

344. In response to Paragraph 344, AltEn denies any inference that it violated applicable law.

345. In response to Paragraph 345, AltEn denies any inference that it violated applicable law.

346. In response to Paragraph 346, AltEn denies any inference that it violated applicable law.

347. AltEn denies Paragraph 347.

348. In response to Paragraph 348, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

349. In response to Paragraph 349, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

350. AltEn denies Paragraph 350.

351. AltEn denies Paragraph 351.

352. AltEn denies Paragraph 352.

C. Requirement to Avoid Releases of Pollutants.

353. Paragraph 353 is a statement and does not assert any claims against AltEn and, therefore, no response is required.

354. In response to Paragraph 354, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

355. AltEn admits Paragraph 355.

356. AltEn denies Paragraph 356.

357. In response to Paragraph 357, AltEn denies any inference that it violated applicable law.

358. AltEn denies Paragraph 358.

D. Requirement to Minimize Pollutants in Discharges.

359. Paragraph 359 is a statement and does not assert any claims against AltEn and, therefore, no response is required.

360. In response to Paragraph 360, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

361. In response to Paragraph 361, AltEn denies any inference that it violated applicable law.

362. In response to Paragraph 362, AltEn denies any inference that it violated applicable law.

363. In response to Paragraph 363, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

364. AltEn denies Paragraph 364.

365. AltEn denies Paragraph 365.

366. AltEn denies Paragraph 366.

367. In response to Paragraph 367, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same. AltEn denies any inference that repairs were not in progress.

368. AltEn denies Paragraph 368.

369. In response to Paragraph 369, AltEn denies any inference that it violated applicable law.

370. AltEn denies Paragraph 370.

371. In response to Paragraph 371, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

372. AltEn denies Paragraph 372.

373. In response to Paragraph 373, AltEn denies any inference that it violated applicable law.

374. AltEn denies Paragraph 374.

375. AltEn denies Paragraph 375.

E. Unauthorized Non-Storm Water Discharges.

376. Paragraph 376 is a statement and does not assert any claims against AltEn and, therefore, no response is required.

377. In response to Paragraph 377, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

378. In response to Paragraph 378, AltEn denies any inference that it violated applicable law.

379. In response to Paragraph 379, AltEn denies any inference that it violated applicable law.

380. AltEn denies Paragraph 380.

381. In response to Paragraph 381, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

382. In response to Paragraph 382, AltEn denies any inference that it violated applicable law.

383. In response to Paragraph 383, AltEn denies any inference that it violated applicable law.

384. AltEn denies Paragraph 384.

385. In response to Paragraph 385, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

386. In response to Paragraph 386, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

387. In response to Paragraph 387, AltEn denies any inference that it violated applicable law.

388. AltEn denies Paragraph 388.

389. AltEn denies Paragraph 389.

F. Maintenance and Repair of Control Measures.

390. Paragraph 390 is a statement and does not assert any claims against AltEn and, therefore, no response is required.

391. In response to Paragraph 391, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

392. In response to Paragraph 392, AltEn denies any inference that it violated applicable law.

393. In response to Paragraph 393, AltEn denies any inference that it violated applicable law.

394. AltEn denies Paragraph 394.

G. Sampling of Authorized Discharges.

395. Paragraph 395 is a statement and does not assert any claims against AltEn and, therefore, no response is required.

396. In response to Paragraph 396, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

397. AltEn denies Paragraph 397.

398. AltEn denies Paragraph 398.

H. Benchmark Monitoring.

399. Paragraph 399 is a statement and does not assert any claims against AltEn and, therefore, no response is required.

400. In response to Paragraph 400, AltEn has insufficient information to admit or deny and, therefore, denies the same.

401. In response to Paragraph 401, AltEn has insufficient information to admit or deny and, therefore, denies the same.

402. AltEn denies Paragraph 402.

I. Requirement to Document Areas and Describe Pollutants.

403. Paragraph 403 is a statement and does not assert any claims against AltEn and, therefore, no response is required.

404. In response to Paragraph 404, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

405. In response to Paragraph 405, AltEn denies any inference that it violated applicable law.

406. In response to Paragraph 406, AltEn denies any inference that it violated applicable law.

407. In response to Paragraph 407, AltEn denies any inference that it violated applicable law.

408. In response to Paragraph 408, AltEn denies any inference that it violated applicable law.

409. In response to Paragraph 409, AltEn denies any inference that it violated applicable law.

410. AltEn denies Paragraph 410.

J. SWPPP Availability Requirement.

411. AltEn admits Paragraph 411.

412. Paragraph 412 is a statement and does not assert any claims against AltEn and, therefore, no response is required.

413. AltEn denies Paragraph 413.

414. AltEn denies Paragraph 414.

415. AltEn denies Paragraph 415.

416. AltEn denies Paragraph 416.

417. AltEn denies Paragraph 417.

NINTH CAUSE OF ACTION

FAILURE TO COMPLY WITH CONSTRUCTION STORM WATER PERMIT CONDITIONS IN VIOLATION OF NEB. REV. STAT. § 81-1508.02(1)(b).

418. In response to Paragraph 418, AltEn hereby incorporates its responses to Paragraphs 1 through 172 as though fully set forth herein.

419. Paragraph 419 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

420. In response to Paragraph 420, AltEn has insufficient information to admit or deny and, therefore, denies the same.

421. In response to Paragraph 421, AltEn has insufficient information to admit or deny and, therefore, denies the same.

A. SWPPP Availability and Posting Requirements.

422. AltEn admits Paragraph 422.

423. Paragraph 423 is a statement and does not assert any claims against AltEn and, therefore, no response is required.

424. In response to Paragraph 424, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same. AltEn denies that it could not provide SWPPPs.

425. In response to Paragraph 425, AltEn denies any inference that it violated applicable law.

426. In response to Paragraph 425, AltEn denies any inference that it violated applicable law.

427. AltEn denies Paragraph 427.

B. Failure to Comply with Storm Water Effluent Limitation Guidelines.

428. In response to Paragraph 428, AltEn denies any inference that it violated applicable law.

429. In response to Paragraph 429, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

430. AltEn denies Paragraph 430.

431. AltEn denies Paragraph 431.

C. Failure to Maintain control BMPs.

432. In response to Paragraph 432, AltEn denies any inference that it violated applicable law.

433. In response to Paragraph 433, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

434. AltEn denies Paragraph 434.

435. AltEn denies Paragraph 435.

436. In response to Paragraph 436, AltEn denies any inference that it violated applicable law.

437. AltEn denies Paragraph 437.

438. AltEn denies Paragraph 438.

TENTH CAUSE OF ACTION

FAILURE TO CONDUCT A PERFORMANCE TEST FOR THE DIGESTER FLARE IN VIOLATION OF NEB. REV. STAT. § 81-1506(4)(b) AND AIR PERMITS

439. In response to Paragraph 439, AltEn hereby incorporates its responses to Paragraphs 1 through 172 as if fully set forth herein.

440. Paragraph 440 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

441. In response to Paragraph 441, AltEn denies any inference that it violated applicable law.

442. In response to Paragraph 442, AltEn denies any inference that it violated applicable law.

443. In response to Paragraph 443, AltEn denies any inference that it violated applicable law.

444. In response to Paragraph 444, AltEn denies any inference that it violated applicable law.

445. In response to Paragraph 445, AltEn denies any inference that it violated applicable law.

446. AltEn denies Paragraph 446.

447. AltEn denies Paragraph 447.

ELEVENTH CAUSE OF ACTION

FAILURE TO INSTALL AND OPERATE CEMS UNITS FOR THE ANAEROBIC DIGESTION SYSTEM IN VIOLATION OF NEB. REV. STAT. § 81-1506(4)(b) AND AIR PERMIT

448. In response to Paragraph 448, AltEn hereby incorporates its responses to Paragraphs 1 through 172 as if fully set forth herein.

449. Paragraph 449 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

A. Failure to Install TRS CEMS Unit.

450. In response to Paragraph 450, AltEn denies any inference that it violated applicable law.

451. In response to Paragraph 451, AltEn denies any inference that it violated applicable law.

452. AltEn denies Paragraph 452.

B. Failure to Install a Methane CEMS Unit.

453. In response to Paragraph 453, AltEn denies any inference that it violated applicable law.

454. In response to Paragraph 454, AltEn denies any inference that it violated applicable law.

455. AltEn denies Paragraph 455.

456. AltEn denies Paragraph 456.

457. AltEn denies Paragraph 457.

458. AltEn denies Paragraph 458.

TWELFTH CAUSE OF ACTION

**FAILURE TO PAVE ALL PRODUCTION-RELATED TRUCK TRAFFIC AREAS AND
RECORD BMPS USED ONSITE IN VIOLATION OF NEB. REV. STAT. § 81-1506(4)(b)
AND AIR PERMITS**

459. In response to Paragraph 459, AltEn incorporates by reference its responses to Paragraphs 1 through 172 as if fully set forth herein.

460. Paragraph 460 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

461. In response to Paragraph 461, AltEn denies any inference that it violated applicable law.

462. In response to Paragraph 462, AltEn denies any inference that it violated applicable law.

463. In response to Paragraph 463, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

464. In response to Paragraph 464, AltEn denies any inference that it violated applicable law.

465. AltEn denies Paragraph 465.

466. AltEn denies Paragraph 466.

467. AltEn denies Paragraph 467.

THIRTEENTH CAUSE OF ACTION

FAILURE TO COMPLY WITH PERMIT CONDITIONS FOR THE FERMENTATION AND DISTILLATION SCRUBBER IN VIOLATION OF NEB. REV. STAT. § 81-1509(4)(b) AND AIR PERMIT

468. In response to Paragraph 468, AltEn incorporates by reference its responses to Paragraphs 1 through 172 as if fully set forth herein.

469. Paragraph 469 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

A. Failure to Operate and Maintain the Scrubber.

470. In response to Paragraph 470, AltEn denies any inference that it violated applicable law.

471. In response to Paragraph 471, AltEn denies any inference that it violated applicable law.

472. In response to Paragraph 472, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

473. In response to Paragraph 473, AltEn denies any inference that it violated applicable law.

474. AltEn denies Paragraph 474.

B. Failure to Provide the Manual for the Scrubber.

475. In response to Paragraph 475, AltEn denies any inference that it violated applicable law.

476. In response to Paragraph 476, AltEn denies any inference that it violated applicable law.

477. In response to Paragraph 477, AltEn denies any inference that it violated applicable law.

478. AltEn denies Paragraph 478.

C. Failure to Provide Daily Observation Records for the Scrubber.

479. In response to Paragraph 479, AltEn denies any inference that it violated applicable law.

480. In response to Paragraph 480, AltEn denies any inference that it violated applicable law.

481. In response to Paragraph 481, AltEn denies any inference that it violated applicable law.

482. In response to Paragraph 482, AltEn denies any inference that it violated applicable law.

483. AltEn denies Paragraph 483.

D. Failure to Provide Records for the Scrubber and Ethanol Loadout System.

484. In response to Paragraph 484, AltEn denies any inference that it violated applicable law.

485. In response to Paragraph 485, AltEn denies any inference that it violated applicable law.

486. In response to Paragraph 486, AltEn denies any inference that it violated applicable law.

487. In response to Paragraph 487, AltEn denies any inference that it violated applicable law.

488. AltEn denies Paragraph 488.

489. AltEn denies Paragraph 489.

490. AltEn denies Paragraph 490.

FOURTEENTH CAUSE OF ACTION

FAILURE TO SUBMIT RELEVANT FACTS IN THE PERMIT APPLICATION IN VIOLATION OF NEB. REV. STAT. § 81-1506(4)(b) AND AIR PERMIT

491. In response to Paragraph 491, AltEn incorporates by reference its responses to Paragraphs 1 through 172 as if fully set forth herein.

492. Paragraph 492 is a statement of law and does not assert any claims against AltEn and, therefore, does not require a response.

493. In response to Paragraph 493, AltEn denies any inference that it violated applicable law.

494. In response to Paragraph 494, AltEn denies any inference that it violated applicable law.

495. In response to Paragraph 495, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

496. In response to Paragraph 496, AltEn denies any inference that it violated applicable law.

497. In response to Paragraph 497, AltEn denies any inference that it violated applicable law.

498. AltEn denies Paragraph 498.

499. AltEn denies Paragraph 499.

FIFTEENTH CAUSE OF ACTION

FAILURE TO NOTIFY THE DEPARTMENT OF OPERATIONAL CHANGES THAT MAY CAUSE PREVIOUS TESTING NOT TO REPRESENT CURRENT OPERATING CONDITIONS OR EMISSIONS IN VIOLATION OF NEB. REV. STAT. § 81-1506(4)(b) AND AIR PERMIT

500. In response to Paragraph 500, AltEn incorporates by reference its responses to Paragraphs 1 through 172 as if fully set forth herein.

501. Paragraph 501 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

502. In response to Paragraph 502, AltEn denies any inference that it violated applicable law.

503. In response to Paragraph 503, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

504. In response to Paragraph 504, AltEn denies any inference that it violated applicable law.

505. In response to Paragraph 505, AltEn denies any inference that it violated applicable law.

506. AltEn denies Paragraph 506.

507. AltEn denies Paragraph 507.

SIXTEENTH CAUSE OF ACTION

ALLOWING AN OPEN FIRE WITHOUT THE DIRECTOR'S WRITTEN PERMISSION IN VIOLATION OF NEB. REV. STAT. § 81-1506(4)(b) AND AIR PERMIT

508. In response to Paragraph 508, AltEn incorporates by reference its responses to Paragraphs 1 through 172 as if fully set forth herein.

509. Paragraph 509 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

510. In response to Paragraph 510, AltEn denies any inference that it violated applicable law.

511. In response to Paragraph 511, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same. AltEn denies any inference that it violated applicable law.

512. In response to Paragraph 512, AltEn denies any inference that it violated applicable law.

513. AltEn denies Paragraph 513.

514. In response to Paragraph 514, AltEn denies any inference that it violated applicable law.

515. AltEn denies Paragraph 515.

516. AltEn denies Paragraph 516.

SEVENTEENTH CAUSE OF ACTION

FAILURE TO KEEP OR PROVIDE RECORDS REQUIRED BY THE AIR PERMITS IN VIOLATION OF NEB. REV. STAT. § 81-1506(4)(b) AND AIR PERMITS

517. In response to Paragraph 517, AltEn incorporates by reference its responses to Paragraphs 1 through 172 as if fully set forth herein.

518. Paragraph 518 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

A. Failure to Keep Records of Equipment Failures

519. In response to Paragraph 519, AltEn denies any inference that it violated applicable law.

520. In response to Paragraph 520, AltEn has insufficient information to admit or deny the Department's observations and, therefore, denies the same.

521. In response to Paragraph 521, AltEn denies any inference that it violated applicable law.

522. AltEn denies Paragraph 522.

B. Failure to Keep Records Showing a Flare Present.

523. In response to Paragraph 523, AltEn denies any inference that it violated applicable law.

524. In response to Paragraph 524, AltEn denies any inference that it violated applicable law.

525. In response to Paragraph 525, AltEn denies any inference that it violated applicable law.

526. AltEn denies Paragraph 526.

C. Failure to Maintain and Keep a Site Survey Documenting As-Built Stack Heights.

527. In response to Paragraph 527, AltEn denies any inference that it violated applicable law.

528. In response to Paragraph 528, AltEn denies any inference that it violated applicable law.

529. In response to Paragraph 529, AltEn denies any inference that it violated applicable law.

530. In response to Paragraph 530, AltEn denies any inference that it violated applicable law.

531. In response to Paragraph 531, AltEn denies any inference that it violated applicable law.

532. AltEn denies Paragraph 532.

D. Failure to Keep the Drift Loss Design Specifications Onsite.

533. In response to Paragraph 533, AltEn denies any inference that it violated applicable law.

534. In response to Paragraph 534, AltEn denies any inference that it violated applicable law.

535. In response to Paragraph 535, AltEn denies any inference that it violated applicable law.

536. AltEn denies Paragraph 536.

E. Failure to Provide Access to Records to Ensure Compliance.

537. In response to Paragraph 537, AltEn denies any inference that it violated applicable law.

538. In response to Paragraph 538, AltEn denies any inference that it violated applicable law.

539. In response to Paragraph 539, AltEn denies any inference that it violated applicable law.

540. In response to Paragraph 540, AltEn denies any inference that it violated applicable law.

541. AltEn denies Paragraph 541.

542. AltEn denies Paragraph 542.

543. AltEn denies Paragraph 543.

544. AltEn denies Paragraph 544.

EIGHTEENTH CAUSE OF ACTION

FAILURE TO SUBMIT A REPORT THAT DESCRIBES AND CERTIFIES THE CONTROL EQUIPMENT MEETS SPECIFICATIONS IN VIOLATION OF NEB. REV. STAT. § 81-1508.02(1)(e) AND 129 NEB. ADMIN. CODE § 18-001

545. In response to Paragraph 545, AltEn incorporates by reference its responses to Paragraphs 1 through 172 as if fully set forth herein.

546. Paragraph 546 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

547. Paragraph 547 is a statement of law and does not assert any claims against AltEn and, therefore, no response is required.

548. In response to Paragraph 548, AltEn denies any inference that it violated applicable law.

549. In response to Paragraph 549, AltEn denies any inference that it violated applicable law.

550. In response to Paragraph 550, AltEn denies any inference that it violated applicable law.

551. In response to Paragraph 551, AltEn denies any inference that it violated applicable law.

552. AltEn denies Paragraph 552.

553. AltEn denies Paragraph 553.

554. AltEn denies Paragraph 554.

555. AltEn further denies each and every allegation in the Department's complaint not specifically admitted herein and except with constitute admissions against the Department's interests.

WHEREFORE, AltEn respectfully requests the Department's Complaint be dismissed with prejudice at the Department's cost.

ALTEN, LLC, Defendant

MATTSON RICKETTS LAW FIRM

134 S. 13th Street, Suite 1200

Lincoln, NE 68508-1901

Phone No.: (402) 475-8433

Fax No.: (402) 475-0105

E-mail: sdm@mattsonricketts.com

E-mail: jaw@mattsonricketts.com

E-mail: ars@mattsonricketts.com

By:



Stephen D. Mossman, #19859

Joseph A. Wilkins, #21803

Andrew R. Spader, #27099

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via e-mail on April 2, 2021, on the following named parties or its attorneys:

Justin D. Lavene
Maegan L. Woita
Joshua E. Dethlefsen
Assistant Attorney General
2115 State Capitol
P.O. Box 98920
Lincoln, NE 68509-8920
justin.lavene@nebraska.gov
maegan.woita@nebraska.gov
joshua.dethlefsen@nebraska.gov



Stephen D. Mossman, #19859

Certificate of Service

I hereby certify that on Monday, April 05, 2021 I provided a true and correct copy of the Answer to the following:

State of NE, ex rel., represented by Maegan Leigh Woita (Bar Number: 26287) service method: Electronic Service to Maegan.woita@nebraska.gov

AltEn, LLC service method: Email

Signature: /s/ Mossman,Stephen,D (Bar Number: 19859)